In the United States Patent and Trademark Office

In re the Application of:

Leland James Wiesehuegel	)	
Serial Number: 09/773,197	)	Group:3679
Docket Number: AUS920000945US1	)	Examiner: Eric K. Nicholson
Filed on: 01/31/2001	)	
For: "Dynamic Catalog for On-Line	)	
Offering and Bid System"	)	

REPLY BRIEF

In Appellants' Second Appeal Reinitiation

Appellants maintain all arguments presented in their Appeal Brief, and wish to respond to the following specific points made in the Examiner's Answer dated 11/17/2006.

Objections are Reviewable by the Board

In the Examiner's Answer, it was stated that the objections from which the Appellants have requested relief are not appeallable matter, but instead are petitionable matter, citing MPEP §1002 and §1201.

The Board has proper jurisdiction to review all of these objections because:

(a) The Board has jurisdiction over the examiner's decision to finally deny the patentability of this patent application because some of the claims have been rejected at least twice or have been finally rejections:

> 35 U.S.C. §134(a) . . .An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences . . .

The facts of this case are that this application has been finally rejected *three* times, and *twice* reopened for examination following filing of Appeal Briefs.

(b) The Board has jurisdiction because the objections relate to statutory requirements for:

i. The disclosure to support the claims, and the drawings, if necessary, to illustrate the invention, and the objections are not limited to rules (e.g. the MPEP) or Office procedure; and

ii. The objections are not limited to the examiner's need for further information regarding the objectives of the invention or the gist of the invention, whereas examiner has stated the ability to assume the meaning of the claims for the purpose of examination (e.g. the examiner has indicated an understanding of the invention as described, illustrated, and claimed, through assumption of the claim interpretations for examination purposes) (*Ex parte* C, 27 USPQ2d 1492, 1494 (B.P.A.I. 1993); and

(c) The rationale for the objections, and weighing of both the examiner's arguments and the appellants arguments, require exercise of technical skill and legal judgement (*In re Searles,* 422 F2d 431, 164 USPQ 623 (CCPA 1970).

Further, some of the objections, as noted in the Appeal Brief, are reviewable by the Board because Appellants replies to Office Actions were not addressed by the examiner, either by agreeing with the remarks in the replies, or by arguing against the remarks. The examiner is required by statute 35 U.S.C. §132(a) to reexamine the application, and thus the objections arise or are maintained on statutory basis.

The examiner's argument relies solely on Office Procedure (MPEP), which does not override the Law (Title 35 U.S.C.), the Board, or the Courts, and therefore Appellants' request for relief from the Board is maintained.

Appellants Reply to Examiner's Responses

(1) In the Examiner's Responses to Appellants Arguments of the Appeal Brief regarding claims 1 and 6, commencing on page 9 of the Answer, the examiner has emphasized an apparent issue with singular "set" versus plural "sets", but has acknowledged and quoted Appellants' disclosure regarding an "initial" set. The use of the term "initial" would signal to one of ordinary skill in the art that there will either be a subsequent set or another set of some sort, and

thus there is no actual confusion over "set" versus "sets" as proposed by the examiner. The claim must be examined in its entirety.

(2) In the Examiner's Responses to Appellants Arguments of the Appeal Brief regarding claims 11 through 15 in the last paragraph of page 10, the examiner has attempted to point out that three features are linked, not just two, but then the examiner has stated that this rejection is being "dropped". But it appears that the examiner is actually withdrawing on this basis or reason for the rejection, but is maintaining the rejection on other reasons or grounds. Clarification is requested, or reversal of the rejections is in order.

In the last paragraph on page 11 of the Answer, the examiner has asserted that:

> . . . it should be noted "database" and "system" are two different concepts, thus how can a system be a database.

Examiner's argument seems to rely on whether a database is just a data structure, or a database can be a system, or a system can have a database, etc. It is not stated in the Answer whether this knowledge of different database and system "concepts" is drawn from the examiner's own knowledge or it is based upon literature or reference sources in the industry. Certainly, there are plenty of manufacturers of "database systems" who would disagree. The fact that there are 424 issued US patents which appear as of January 16, 2007, in the USPTO's online database in which the titles include the term "database system" would also controvert the examiner's position. The claims must be read in light of the specification, and clearly the Appellants' specification discloses databases which are components of computer systems.

However, it is incumbent on the examiner to support assertions such as these with evidence, else, the rejections should be reversed. The burden of disproving the examiner's unsupported statements does not fall with the Appellants. For these reasons, the rejections should be withdrawn.

(3) On page 13, beginning in the last paragraph, the examiner has questioned whether or not Appellants claims actually recite "automatic" linking or "automatically" updating links. Appellants have clearly recited in the same step or element that such "dynamic linking" is done "by executing a synchronization script or program", which is unmistakably "automatic" as opposed to manual. The claims must be examined in their entirety and not piecemeal, and therefore the rejections should be reversed.

Respectfully,

/ Robert Frantz /

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